

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

Johnna Williams)	COMPLAINT
)	
Plaintiff,)	
v.)	
)	
)	JURY TRIAL DEMANDED
Capital One Bank USA, N.A.,)	
)	
Defendant.)	

COMPLAINT

1. This is an action brought by Plaintiff, Johnna Williams, for actual and statutory damages for Defendant's violations of the Telephone Consumer Protection Act, 47 U.S.C. §227, *et seq* (hereinafter "TCPA").

JURISDICTION AND VENUE

2. This Court has Jurisdiction under 28 U.S.C. §1332. Venue is proper in that the Defendant transacted business here, and the Plaintiff resides here.

PARTIES

3. Plaintiff, Johnna Williams, is a resident and citizen of the State of South Carolina, Florence County, and is over the age of twenty-one (21) years. Plaintiff hereby opts out of any class action covering the claims alleged herein that is currently pending or that is filed after this lawsuit.
4. Defendant Capital One Bank USA, N.A. (hereinafter "Capital One"), whose correct

corporate status is unknown to the Plaintiff at this time, was in all respects and at all times relevant herein, doing business in the State of South Carolina. Defendant Capital One may be served with process through its registered agent for service of process, Corporation Service Company, 11 South 12th Street, Richmond, Virginia 23219.

FACTUAL ALLEGATIONS

5. Beginning in June, 2012, Defendant made multiple harassing telephone calls to Plaintiff's cellular telephone in an attempt to collect an alleged debt. Said calls came from the following telephone numbers: 1-800-684-8429 and 1-800-955-6600.
6. From June 14, 2012 until July 24, 2012, Defendant called Plaintiff from the two above-mentioned numbers no less than 131 times.
7. The calls made by or on behalf of Defendant were numerous and designed to harass Plaintiff into paying a debt. Plaintiff received multiple calls per day from Defendant and was not able to enjoy a moment's peace due to the constant calls made by Defendant to Plaintiff's cellular telephone.
8. Upon information and belief, all of the calls placed to the Plaintiff's cellular telephone by Defendant were made through the use of an automatic telephone dialing system as defined by 47 U.S.C. § 227.
9. Defendant repeatedly called Plaintiff on a number that was assigned to a cellular telephone service. Additionally, Plaintiff incurs a charge for incoming calls pursuant

to 47 U.S.C. §227(b)(1).

10. Plaintiff did not expressly or impliedly consent to Defendant's placement of telephone calls to her cellular telephone by the use of an automatic telephone dialing system pursuant to 47 U.S.C. §227(b)(1)(A). Defendant knew, or should have known, that they were calling Plaintiff's cellular telephone number without Plaintiff's consent. Defendant also knew, or should have known, that the account they were trying to collect was not in Plaintiff's name. Yet, Defendant continued to repeatedly call the Plaintiff.
11. To the extent that Defendant had consent to contact Plaintiff's cellular telephone, which Plaintiff denies, all such consent was revoked on a number of occasions by Plaintiff, who told Defendant to stop calling her.
12. None of Defendant's telephone calls placed to Plaintiff were for emergency purposes as defined by 47 U.S.C. §227(b)(1)(A)(I).
13. The telephone calls made by Defendant were in violation of 47 U.S.C. §227(b)(1).

COUNT ONE
(Violation of the Telephone Consumer Protection Act)

14. Plaintiff hereby adopts all of the allegations set forth in paragraphs 5 through 13 as if set forth fully herein.
15. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. §227 *et seq.*

16. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

COUNT TWO
(Violation of the Telephone Consumer Protection Act)

17. Plaintiff hereby adopts all of the allegations set forth in paragraphs 5 through 16 as if set forth fully herein.
18. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. §227 *et seq.*
19. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §227 *et seq.*, the Plaintiff is entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(c).

AMOUNT OF DAMAGES DEMANDED

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands a judgment against Defendant for the following:

- A. Statutory damages of \$500.00 from Defendant for each and every negligent violation of the TCPA;
- B. Treble statutory damages of \$1,500.00 for each and every call made to the Plaintiffs' cell phones by Defendant as each and every call was a knowing

and/or willful violation of 47 U.S.C. §227 *et seq.*;

C. For this matter to be heard by a jury; and

D. For such other and further relief as this Court deems necessary and proper.

/s/ Penny Hays Cauley

Penny Hays Cauley, Fed ID No 10323

Attorney for Plaintiff

OF COUNSEL:

HAYS CAULEY, P.C.

1303 West Evans Street

Florence, SC 29501

(843) 665-1717

(843) 665-1718 Facsimile

phc917@hayscauley.com

PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY ON ALL COUNTS

/s/ Penny Hays Cauley

Of Counsel

DEFENDANT TO BE SERVED VIA CERTIFIED MAIL:

Capital One Bank USA, N.A.

c/o Corporation Service Company - Registered Agent

11 South 12th Street

Richmond, VA 23219